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**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Agriculture Bag Manufacturing U.S.A., Inc.  
Attn: Jeff C. Kuo  
960 98<sup>th</sup> Ave.  
Oakland, CA 94603

***NOTICE OF INTENT TO FILE CITIZEN SUIT  
PURSUANT TO THE FEDERAL CLEAN WATER ACT***

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**Facility:** Agriculture Bag Manufacturing U.S.A., Inc.  
960 98<sup>th</sup> Ave.  
Oakland, CA 94603  
WDID No. 2 01I022113

**Basin Plan:** San Francisco Bay Basin, Region 2, Water Quality Control Plan

**Receiving Water:** San Leandro Creek in the San Francisco Bay Watershed

Dear Mr. Kuo:

On behalf of the Plastic Pollution Coalition, a project of the Earth Island Institute (collectively, "PPC"), whose address is 2150 Allston Way #460, Berkeley, California 94704, and telephone number is (510) 859-9100, I write regarding violations under the federal Clean Water Act ("CWA") occurring at the facility of Agriculture Bag Manufacturing U.S.A., Inc. ("Agriculture Bag") located at 960 98<sup>th</sup> Avenue, Oakland, CA 94603 ("Facility"). **The purpose of this letter is to provide Agriculture Bag with notice of these violations and notice of PPC's intent to file a lawsuit against the Agriculture Bag in sixty (60) days under the CWA in Federal District Court, pursuant to 33 U.S.C. § 1365(a)(1).** This letter puts Agriculture Bag on notice of violations and is being sent to you as the responsible owner, officer, and/or operators of Agriculture Bag, or as the registered agent for Agriculture Bag.

**I. Legal Framework**

The objective of the Clean Water Act is to restore and maintain the "chemical, physical and biological integrity of [the] Nation's waters." 33 U.S.C. § 1251(a). In accordance with that objective, § 301(a) of the Clean Water Act makes unlawful "the discharge of any pollutant by

any person,” unless in compliance with a permit issued under the National Pollutant Discharge Elimination System (“NPDES”). 33 U.S.C. §§ 1311(a), 1342; *Envtl. Prot. Agency v. California ex rel. State Water Resources Control Board*, 426 U.S. 200, 205 (1976). “An NPDES permit serves to transform generally applicable effluent limits and other standards . . . into the obligations . . . of the individual discharger.” *State Water Resources Control Board*, 426 U.S. at 205. Noncompliance with a permit constitutes a violation of the Clean Water Act. 40 C.F.R. § 122.41.

### **Stormwater Permit**

Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p), establishes a framework for regulating pollutants associated with industrial activity. In California, any person who discharges storm water associated with industrial activity must comply with the terms of California’s general permit covering such discharges (“Stormwater Permit”).<sup>1</sup> 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.41(a); Stormwater Permit, § C(1). “Any [Stormwater] Permit noncompliance constitutes a violation of the [CWA] and the [California] Porter-Cologne Water Quality Control Act.” Stormwater Permit, § C(1). Broadly, the Stormwater Permit prohibits discharges of materials other than storm water directly or indirectly to waters of the United States and storm water discharges which “cause or threaten to cause pollution, contamination, or nuisance.” *Id.*, § A. The Stormwater Permit imposes a duty to “take all responsible steps to minimize or prevent any discharge in violation of [the Stormwater] Permit which has a reasonable likelihood of adversely affecting human health or the environment.” *Id.*, § C(4).

The Stormwater Permit implements the requirements of the Clean Water Act through both technology-based provisions and water quality-based standards. The Stormwater Permit sets out four basic requirements for permittees: (1) effluent limitations, (2) receiving water limitations, (3) the implementation of a Storm Water Pollution Prevent Plan (“SWPPP”), and (4) the development of a Monitoring and Reporting Program (“MRP”).

### **Effluent Limitations**

First, the Stormwater Permit sets effluent limitations. There are three basic effluent limitations. Where the EPA has set effluent limitation guidelines for an industry, storm water discharges may not exceed the specific guidelines. Stormwater Permit, Effluent Limitation B(1). Additionally, storm water discharges shall not contain a hazardous substance equal to or in excess of a reportable quantity listed in 40 C.F.R. Part 117 and/or 40 C.F.R. Part 302.

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<sup>1</sup> National Pollutant Discharge Elimination System General Permit No. CAS000001, California Water Quality Control Board, Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities. The Stormwater Permit is available at: [http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/docs/induspmpt.pdf](http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/induspmpt.pdf). Agriculture Bag submitted a Notice of Intent for coverage for the Facility under the Stormwater Permit to the State Water Resources Control Board on June 18, 2009.